

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

ONG VUE,)
)
Plaintiff,)
)
vs.) NO. CIV-18-0366-HE
)
FRANK X. HENKE, *et al.*,)
)
Defendants.)

ORDER

Plaintiff Ong Vue, a state prisoner appearing *pro se*, filed this § 1983 action alleging violations of his constitutional rights. Pursuant to 28 U.S.C. § 636(b)(1)(B) and (C), the matter was referred to Magistrate Judge Gary M. Purcell for initial proceedings. Judge Purcell has issued a Report and Recommendation (the “Report”) recommending that plaintiff’s complaint be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b) for failure to state a claim upon which relief may be granted. Plaintiff has filed an objection to the Report which triggers *de novo* review.

The Report concluded that plaintiff is unable to rely on Graham v. Florida and Miller v. Alabama to support his Eighth and Fourteenth Amendment claims and that he has suffered no Due Process or Equal Protection violations based on the allegations in his complaint. In response, plaintiff's objection and declaration attempt to enhance the alleged constitutional violations by focusing on the fact that he is nonwhite and not a U.S. citizen. The court concludes that plaintiff's new arguments, raised for the first time in objection to the Report, have been waived. Gonzales v. Ledezma, 417 Fed. Appx. 824, 826 (10th Cir.

2011) (citing Marshall v. Chater, 75 F.3d 1421, 1426 (10th Cir. 1996) (“Issues raised for the first time in objections to the magistrate judge’s recommendation are deemed waived.”)). Further, the simple allegation that he was discriminated against in the parole process because he is nonwhite and not a citizen does not raise his claims to the plausible level.

The remainder of plaintiff’s objections are simply reassertions of arguments raised in his complaint and properly considered by Judge Purcell. Accordingly, the Report and Recommendation [Doc. #28] is **ADOPTED**. Plaintiff’s complaint [Doc. #1] is **DISMISSED** without prejudice.

IT IS SO ORDERED.

Dated this 29th day of May, 2018.



JOE HEATON
CHIEF U.S. DISTRICT JUDGE